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PATENT
Attorney Docket No. 101.0107-01000
Customer No. 22882

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	Confirmation No.: 3402
Gary K. Michelson)	
Serial No.: 10/719,424)	Group Art Unit: 3733
Filed: November 21, 2003)	Examiner: Pedro Philogene
For: EXPANDABLE INTERBODY SPINAL)	
FUSION IMPLANT WITH EXPANSION)	
CONSTRAINING MEMBER AND)	
METHOD FOR USE THEREOF)	

Mail Stop AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

TERMINAL DISCLAIMER

Petitioner ("assignee") Warsaw Orthopedic, Inc., duly organized under the laws of the State of Indiana, and having its principal place of business at 2500 Silveus Crossing, Warsaw, Indiana 46581 represents that it is the only assignee of the entire right, title and interest in and to above-identified Application No. 10/719,424 filed November 21, 2003 for EXPANDABLE INTERBODY SPINAL FUSION IMPLANT WITHH EXPANSION CONSTRAINING MEMBER AND METHOD FOR USE THEREOF in the name of Gary K. Michelson as indicated by assignment duly recorded in the United States Patent and Trademark Office at Reel 018552 and Frame 0456; and is the only assignee of the entire right, title and interest in and to Application No. 10/094,467, filed March 8, 2002 (now U.S. Patent No. 6,849,093) for EXPANSION CONSTRAINING MEMBER ADAPTED FOR USE WITH AN EXPANDABLE INTERBODY SPINAL FUSION IMPLANT AND METHOD FOR USE THEREOF in the name of Gary K.

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Michelson as indicated by assignment duly recorded in the United States Patent and Trademark Office at Reel 018498 and Frame 0654. Assignee Warsaw Orthopedic, Inc. further represents through its representative that to the best of assignee's knowledge and belief, title to the above-identified application and the United States Patent No. 6,849,093 are in assignee, which is submitting this Terminal Disclaimer.

To obviate a double patenting rejection, Warsaw Orthopedic, Inc. hereby disclaims, under the provisions of 37 C.F.R. § 1.321, the terminal part of any patent granted on above-identified Application No. 10/719,424, which would extend beyond the expiration date of Patent No. 6,849,093; and hereby agrees that any patent so granted on the above-identified application shall be enforceable only for and during such period that the legal title to said patent shall be the same as the legal title to United States Patent No. 6,849,093; this agreement to run with any patent granted on the above-identified application and to be binding upon the grantee, its successors or assigns.

In making the above disclaimer, Petitioner does not disclaim the terminal part of any patent granted on Application No. 10/719,424 that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. §§ 154 to 156 and 173 of Patent No. 6,849,093; as presently shortened by any terminal disclaimer, in the event that Patent No. 6,849,093: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or in part, is terminally disclaimed under 37 C.F.R. § 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term, as presently shortened by any terminal disclaimer.

In accordance with the fee schedule set forth in 37 C.F.R. § 1.20(d), the required fee of \$130.00 is being filed with this disclaimer.


If a check for the required fee is not filed concurrently herewith or if there are any additional fees due in connection with the filing of this reply, please charge the fees to our Deposit Account No. 50-3726. If a fee is required for an extension of time under 37 C.F.R. 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

The undersigned is authorized to act on behalf of assignee Warsaw Orthopedic, Inc.

Respectfully submitted,

MARTIN & FERRARO, LLP

Date: January 8, 2007

By: 
Thomas H. Martin
Registration No. 34,383

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documents as prior art against any claim in the application and applicant determines that the cited documents do not constitute "prior art" under United States law, applicant reserves the right to present to the office the relevant facts and law regarding the appropriate status of such documents.

Applicant further reserves the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should one or more of the documents be applied against the claims of the present application.

If there is any additional fee due in connection with the filing of this Statement, please charge the fee to Deposit Account No. 50-3726.

Respectfully submitted,

MARTIN & FERRARO, LLP

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